IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 567 of 2001
(Old No. 314 of 1994)

New India Assurance Company
Limited, Haldwani ……..…….. Appellant

Versus

Kundan Singh & others …… Respondents

Mr. R.B. Agarwal, learned counsel for the appellant.
Mr. Amit Bhatt, learned counsel for the respondents.

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

(Delivered by Hon'ble P.C. Pant, J.)

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 16.08.1994 passed by Shri P.D. Dhaundiyal, the then learned IV Additional District Judge / Presiding Officer, Motor Accident Claims Tribunal, Nainital whereby in M.A.C. Case No. 202 of 1988 the Tribunal has awarded Rs. 35,000/- as compensation to the appellants/ claimants.

2. Brief facts of the case giving rise to the present appeal are that on 10.01.1988, Bhagwant Singh (deceased) was travelling from Haldwani to Almora in a bus bearing registration No. URN 9428. The driver of the bus was driving it rashly and negligently. When the bus reached near Khairana, the driver lost control of the bus and it fell in a gorge and caught fire. Bhagwant Singh (deceased) and many other passengers got burn injuries and died. The deceased was four and a half years of age. Shri Kundan Singh, claimant No. 1 is father of the deceased while Narendra Singh, (claimant No. 2), Km. Mamta (claimant

No. 3) and Kamal Singh (claimant No. 4) are brothers and sister respectively of the deceased. Opposite party No. 1, Kanta Devi was owner of the vehicle and New India Assurance Company Ltd. (present appellant) was the company with whom the vehicle was ensured. Opposite party No. 4 in the petition was the driver of the vehicle in question.

3. In the written statement before the trial Court, the owner of the vehicle has admitted the accident and death of the passengers including that of Bhagwant Singh. However, the opposite parties including the owner have denied allegations that the bus was being driven rashly and negligently by the driver of the bus. Opposite party No. 2 (present appellant) has taken a further plea that the owner of the bus has no permit to ply the vehicle between Haldwani and Almora.

4. Learned Presiding officer of the trial after examining the pleas, framed following issues:

i) Whether, the bus was being driven at the relevant time for and on behalf of opposite party No. 4? If so, its effect?

ii) Whether, the accident in question, on account of which Bhagwant Singh died, was due to rash and negligent driving of the driver of bus No. URN 9428?

iii) Whether, on the date of the alleged accident the opposite party No. 1 was the owner of the vehicle and had no control over the vehicle and its driver? If so, its effect?

iv) Whether, the bus was owned by opposite party No. 4 on the date of accident, if so, its effect?

v) Whether, at the relevant time bus was being driven without valid permit for the route in question? If so, its effect?

vi) Which of the opposite parties is liable to pay compensation to the claimants?

vii) To what amount of compensation, if any, the claimants are entitled?

5. After recording the evidence of the parties and hearing them, learned Presiding officer of the Tribunal has found that the accident in question has taken place due to the rash and negligent driving on part of the driver, who was employed by opposite party No. 1 as owner of the bus. The Tribunal further found that since the bus was plying under Kumaon Motor Owners Union Ltd., hence it had the route permit. The Tribunal also came to the conclusion that the claimants are entitled to compensation to the tune of Rs. 35,000/- and the New India Assurance company Ltd. with whom the vehicle was ensured was liable to pay it. Accordingly, the Award was passed for the sum along with 10% interest on the amount of compensation. Aggrieved with the Award, New India Assurance company Ltd. has preferred this appeal.

6. We have heard learned counsel for the parties and perused the record. This claim petition was filed by Shri Kundan Singh (claimant No. 1) father of the deceased alleging that at the time of his death the deceased was four and a half years of age. He was sharp minded boy and in future can provide financial assistance to the family. It is evident from the records that all the claimants are elder to the deceased and by the time the deceased would have become self dependant all the claimants should have been aged about 52-53 i.e. the age of his father and 23 to 29 years i.e. age of claimant Nos. 2 to 4. Therefore, it cannot be said that the claimants would have accepted any financial assistance or they in any way would be dependant on the deceased in future. Furthermore, it is difficult to predict anything about the earning of a child in future having age of four

and a half years. Therefore, a lump sum amount of compensation of Rs. 35,000/- on account of monetary loss incurred and mental pain and sufferings to the family of the deceased has rightly been assessed by the Tribunal, which cannot be said to be excessive. This total amount of compensation is to be paid by M/s New India Assurance Company Ltd. i.e. the present appellant in this case.

7. We find no fault in the order passed by the Claims Tribunal while awarding compensation to the extent of Rs. 35,000/- along with 10% interest per annum from the date of petition till the date of actual payment. Therefore, the appeal is devoid of merits and is, hereby dismissed. No order as to costs. Amount deposited in this Court by the appellant company shall be transmitted to the M.A.C.T. concerned for its disbursement amongst the claimants.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt: 07.07.2004
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